

On-line Arts Grants Application and Management System**Contract No. EPP-RFP 8478**

THIS AGREEMENT made and entered into as of this 9th day of May, 2008, by and between Western States Arts Federation, a nonprofit corporation organized and existing under the laws of the State of Colorado, having its principal office at 1743 Wazee Street, Suite 300, Denver, CO 80202 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 NW 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide a On-line Arts Grants Application and Management System, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. EPP-RFP 8478 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated September 21, 2007, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the County desires to procure from the Contractor such On-line Arts Grants Application and Management System for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1 - DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively the terms and conditions of this instrument, the Scope of Services (Appendix A), EPP-RFP No. 8478 and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.
- b) The words "Contract Date" to mean the date on which this Agreement is effective as evidenced by its execution by both parties..
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative.

- d) The word "Contractor" to mean Western States Arts Federation, a nonprofit corporation organized and existing under the laws of the State of Colorado, and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager acting in a reasonable manner as contemplated by this Contract; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the reasonable opinion of the County's Project Manager.
- h) The words "Change Order" or "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as reasonably directed and/or approved by the County.
- i) The term "Initial Contract Term" has the meaning given to it in Article 5 hereof.
- j) The phrase "On-line Arts Grants Application and Management System" or the "On-line System" or the "Licensed Software" is the web based on-line system which accepts and manages applications for public arts grants to be delivered by Contractor to County as part of the Work.
- k) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Contract.
- l) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the Work to be performed by the Contractor.
- m) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor.
- n) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2 - ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) the terms and conditions of this instrument, 2) the Scope of Services (Appendix A), 3) the Miami-Dade County's EPP-RFP No. 8478 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

ARTICLE 3 - RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.

- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in the terms and conditions of this instrument are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4 - NATURE OF THE AGREEMENT

- a) The Contractor shall provide a complete web-based system capable of handling the Cultural Affairs Department's arts grants application and management process by delivering the On-line Grants Application and Management System in a manner which conforms to the Scope of Services. As set forth in the Scope of Services, the On-line Grants Application and Management System will: (i) provide individuals and organizations with access to arts grants information and applications via the internet: (ii) allow applicants to apply and keep track of their application's review and award process on-line: (iii) provide Departmental staff with access to these applications online in order to review, score, and award grants based on the information provided by applicants requesting grant funding: and (iv) generate reports to help monitor, manage, and improve the grant process. The Contractor shall render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- b) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- c) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the reasonable direction of and to the reasonable satisfaction of the County's Project Manager.
- d) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County to the extent the changes do not materially change the Scope of Services or Contractor's costs in performing hereunder or, if such a material change is involved, to the extent the parties agree to the Extra Work as provided for in this Contract. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.
- e) The County shall cooperate with Contractor's pursuit of the Work by making its facilities and personnel reasonably available to Contractor and providing Contractor with timely approvals of and input on Contractor's progress in the pursuit of the Work as required by this Contract.

ARTICLE 5 - CONTRACT TERM

The Contract shall become effective on the Contract Date and shall be for duration of three (3) years (the "Initial Contract Term"). The County, at its sole discretion, reserves the right to exercise the

option to renew this Contract for two (2) additional one-year periods, on an annual basis. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

ARTICLE 6 - NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the County

a) to the Project Manager:

Miami-Dade County
Department of Cultural Affairs
111 NW 1st Street, Suite 625
Miami, FL 33128-1974

Attention: John Copeland
Phone: (305) 375-4209
Fax: (305) 375-3068
E-Mail: jcope@miamidade.gov

and,

b) to the Contract Manager:

Miami-Dade County
Department of Procurement Management
111 NW 1st Street, Suite 1375
Miami, FL 33128-1974

Attention: Jose L. Rivero
Phone: (305) 375-4417
Fax: (305) 375-5688
E-Mail: jlriver@miamidade.gov

(2) To the Contractor

Western States Arts Federation
1743 Wazee Street, Suite 300
Denver, CO 80202

Attention: Shannon Daut
Phone: (303) 629-1166
Fax: (303) 629-9717
E-mail: shannon.daut@westaf.org

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 7 - PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in the total amount of Two Hundred Ninety-Three Thousand Dollars (\$293,000.00). The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor as provided for in Article 60 hereof.

The not to exceed amount of Two Hundred Ninety-Three Thousand Dollars (\$293,000.00), referenced in this Article 7 – Payment For Services/Amount Obligated of this agreement, includes an additional Forty-Three Thousand Dollars (\$43,000.00), to allow the County at its sole discretion to contract for additional services, support, and maintenance at the rates listed in Appendix B – Price Schedule.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

With respect to travel costs and travel related expenses, the Contractor agrees to adhere to CH. 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

ARTICLE 8 - PRICING

Prices shall remain firm and fixed for the Initial Contract Term and any option or extension periods granted under Article 5 of this instrument; however, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof.

- a) The Contractor agrees that pricing for any Licensed Software and services shall be as stipulated in the Appendix B Price Schedule (the "Price Schedule").
- b) With respect to prices for maintenance services, the prices shall be those set forth in the Price Schedule.
- c) With respect to software customization services, the hourly rates shall be those as specified in the Price Schedule.
- d) Contractor represents that all prices, warranties, benefits and other terms being provided hereunder are equal to or better than the terms being offered by the Contractor to its current customers, ordering software and services of similar complexity, detail and customization under substantially all of the same terms and conditions of this Contract, including, but not limited to, terms and conditions relating to the scope and difficulty of customization, initial pricing, delivery deadlines, indemnification and other legal obligations (the "Most Favored Customer Status"). If during the term of this Agreement the Contractor enters into an agreement with any other customer providing such customer with more favorable terms than its then-current Most Favored Customer Status, then subject to the

provisions of paragraph e), below, of this Article this Agreement will be deemed appropriately amended to provide such terms to the County.

- e) Rather than accept the economic and relationship risks of a significant dispute or litigation over the terms of paragraph d), above, of this Article for any and all matters relating to the fee charged by Contractor to license any version of an on-line arts grants application and management system or any other on-line system which is intended to serve the same basic purpose as the On-line System licensed by Contractor to the County under this Agreement, the parties agree that the Contractor's obligations and the County's rights under paragraph d), above, of this Article shall be satisfied by the Contractor paying the County the amount of Two Thousand Five Hundred (\$2,500.00 Dollars) (the Licensee Payment") for each of the first twenty (20) persons to whom a license is granted by Contractor ("licensee") during the period starting with the Launch of Phase II of the On-line System and continuing for five (5) years thereafter of any version of an on-line arts grants application and management system or any other on-line system which is intended to serve the same basic purpose as the On-line System licensed by Contractor to the County under this Agreement. Contractor's obligation under this paragraph is to pay one Licensee Payment per licensee, regardless of the scope of the license granted or any annual or other renewals or extensions of the license granted, and to pay County the Licensee Payment within thirty (30) days of WESTAF entering into a license agreement which generates a Licensee Payment.

Prices for any period after the Initial Contract Term shall be as follows:

(1) the price for the On-line Arts Grants Application and Management System, including hosting services and Maintenance and Technical Support, for the two (2) year extension of this Contract permitted under Article 5 shall be as set forth in the Price Schedule;

(2) the price for training, programmer time and all other pricing shall be as set forth in the Price Schedule, adjusted for inflation as provided for in paragraph (3) of this Article 8.

(3) Prices after the Initial Contract Term are to be adjusted for inflation, using the then current Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the U.S. Department of Labor (the "CPI-U Index").

ARTICLE 9 - METHOD AND TIMES OF PAYMENT

County shall pay Contractor the Contract Price in installments at the times and in the amounts set forth in attached Appendix B. Terms used in Appendix "B" have the same meaning when used elsewhere in this Agreement. All payments due from the County and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance.

Invoices and any associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County
Department of Cultural Affairs
111 NW 1st Street
6th Floor, Suite 625
Miami, FL 33128

Attention: John Copeland

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE 10 - INDEMNIFICATION AND INSURANCE

Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners, principals or subcontractors. Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Provider expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Provider shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

As a condition of Contractor's indemnification obligation to the County provided for in the preceding paragraph of this Article 10, County agrees that the On-line System shall be developed and deployed in such a manner that all users of the On-line System who are applicants for grants administered through the On-Line System ("applicants") shall be required to agree to terms of use which: (a) limit Contractor's and County's liability to actual damages, (b) limit actual damages to the greater of 200% of the fees paid by the applicant or \$500, whichever is greater, (c) expressly waive consequential, incidental, lost profits, exemplary and punitive damages against Contractor and the County, and (d) require the applicant to indemnify Contractor and County for any misuse of the On-line System and for any infringement of third party rights.

Contractor shall furnish to the Vendor Assistance Section, Department of Procurement Management, Administration Division, 111 NW 1st Street, Suite 1300, Miami, Florida 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the vendor as required by Florida Statute 440.
- B. Public Liability Insurance on a comprehensive basis in an amount not less than **\$300,000** combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than **\$300,000** combined single limit per occurrence for bodily injury and property damage.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest “List of All Insurance Companies Authorized or Approved to Do Business in Florida” issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates will indicate no modification or change in insurance shall be made without thirty (30) days in advance notice to the certificate holder.

NOTE: DADE COUNTY BID NUMBER AND TITLE OF PROPOSAL MUST APPEAR ON EACH CERTIFICATE.

CERTIFICATE HOLDER MUST READ:

**MIAMI-DADE COUNTY
111 NW 1st STREET
SUITE 2340
MIAMI, FL 33128**

NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after County notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

ARTICLE 11 - MANNER OF PERFORMANCE

- a) The Contractor shall provide the Services described herein in a competent and professional manner reasonably satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the

Services. The County shall cooperate with Contractor as provided for in Article 4, e) hereof. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder whose performance of Services requires the employee, subcontractor or other person to be present at or upon any physical facility owned, leased or maintained by the County. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.

- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing Services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel as required by paragraph a) of this Article 11 if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 12 - EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

ARTICLE 13 - INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all Work and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the Work or Services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's and not the County's direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the Work.

The Contractor does not have the power or authority to bind the County in any promise, agreement or

representation other than specifically provided for in this Agreement.

ARTICLE 14 - AUTHORITY OF THE COUNTY'S PROJECT MANAGER

- a) The Contractor hereby acknowledges that the County's Project Manager on behalf of the County will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) Subject to the other terms of this Article 14, the Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference or the Project Manager issues an order with which the Contractor does not agree, the Contractor may initiate a dispute resolution process with the County Manager in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties, subject to the Contractor's right to seek redress in the courts without being bound by the Project Manager's or his or her designee's decision. Any such dispute shall be brought, if at all, before the County Manager within thirty (30) days of the last occurrence, event or act out of which the dispute arises.
- e) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived in any provision

of the Agreement or than this Article 14, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article. Nothing in this Article 14 waives any right or remedy of Contractor at law or in equity and the decision of the County Manger shall be reviewed *de novo* in any action by Contractor to enforce the terms and conditions of this Agreement.

ARTICLE 15 - MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 16 - QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope Of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 17 - AUDITS

The Contractor agrees that the County or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such accounting records shall subsequently conform to Generally Accepted Accounting Principles requirements, and shall only address those transactions related to this Agreement.

The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation.

ARTICLE 18 - SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution. County's approval of Contractor's request to substitute personnel will not be unreasonably withheld, conditioned or delayed.

ARTICLE 19 - CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County, except Contractor may, without County's consent, assign this Contract to a successor to its business which both acquires ownership of all software and intellectual property of Contractor necessary to perform under this Contract and employs the Contractor's personnel who are assigned to this Contract to perform under this Contract, provided such successor-assignee is not debarred or otherwise disqualified from doing business with the County.

ARTICLE 20 - SUBCONTRACTUAL RELATIONS

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement.
- f) All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract. In the event the Contractor is in breach of its obligations, the option to pay the Subcontractor directly for performance by such subcontractor shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor. In the event County exercises its right to have a subcontractor complete its work, County shall acquire ownership only of the work it pays to complete and all previously completed work by that subcontractor shall be owned by Contractor and licensed to County as provided for in paragraph 24 d) of this instrument.

- g) The requirements of paragraphs b) through f) of this Article 20 shall not apply to any of Contractor's subcontractors who are identified in Appendix A, Scope of Services, to this Agreement.

ARTICLE 21 - ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

ARTICLE 22 - SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 23 - TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- d) The Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
- i) stop work on the date specified in the notice ("the Effective Termination Date");
 - ii) take such action as may be necessary for the protection and preservation of the County's materials and property;
 - iii) cancel orders; and
 - iv) take no action which will increase the amounts payable by the County under this Agreement.

The County acknowledges that the nature of the Work and the On-Line System requires the

on-going hosting services of Contractor and that an uncompleted version of the On-line System or even a completed version of the On-line system without ongoing provision of Services by Contractor is of no economic value to County.

- e) **In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:**
- i) portion of the Services completed in accordance with the Agreement and the Work Order up to the Effective Termination Date; and
 - ii) noncancelable Deliverables that are not capable of use except in the performance of this Agreement and Work Order and has been specifically developed for the sole purpose of this Agreement Work Order but not incorporated in the Services.
- f) All compensation pursuant to this Article are subject to audit.

ARTICLE 24 - EVENT OF DEFAULT

- a) An Event of Default shall mean a material breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:
- i. the Contractor has not delivered Deliverables on a timely basis.
 - ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled staff Personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within any reasonable time frame set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may suspend its obligation to make payments to Contractor. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:
- i. treat such failure as a repudiation of this Agreement; and

- ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others as permitted in paragraph d) of this Article 24.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives, as limited by paragraph d) of this Article 24, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data. Prior to declaring a default under this Agreement, County shall provide Contractor with written notice of the claimed material breach and provide Contractor with an opportunity to cure the claimed breach. The period of notice and opportunity to cure shall be any reasonable period provided by County in its written notice, but in no event shall be less than ten (10) days.
- d) This paragraph shall apply and limit County's rights under Article 20 and this Article when it otherwise has the right to complete or take possession of any portion of the Work, including portions being developed by subcontractors, or to take possession of any equipment, materials, products, documentation, reports and data following a default by Contractor. County's right to take over development or control of any portion of the Work and to take possession of any equipment, materials, products, documentation, reports and data: (i) shall be limited to any time after Contractor has ceased being actively involved in business without having assigned this Contract to a person who has acquired rights to the Contractor's software and intellectual property necessary to perform under this Contract, and (ii) shall be further limited to County taking possession of a copy of the On-line Software, in its then-completed state, with the rights only to modify such software to conform to the requirements of the Agreement and to use such software in strict compliance with the terms and conditions of the parties' Agreement applicable upon Contractor's delivery of the On-Line System. County shall acquire no ownership in the On-Line System in the form received or taken from Contractor; County acknowledges that no equipment is deliverable by Contractor as part of the Work; and that County shall have no right to take possession or control of any equipment owned or used by Contractor, including, but not limited to, any computer servers owned, leased or licensed to or otherwise used by Contractor.

ARTICLE 25 - NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION

If an Event of Default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 26 - REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for reprourement of Services, including procurement and administrative costs; and,

- c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims from third parties related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an injunction. IN NO EVENT SHALL CONTRACTOR BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE ON-LINE SYSTEM.

ARTICLE 27 - PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.
- b) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.
- c) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s). In the event Contractor cannot comply with the obligations of this paragraph c) at a reasonable cost in relation to the Contract Price, then Contractor shall have the right to terminate the license to the On-line System and refund the portion of the Contract Price or any annual fee or price on a pro rata basis based upon the time County has used the On-line System compared to the total time it was granted the right to use the On-line system under this Agreement. Contractor shall also reimburse the County for any and all reasonable and direct costs incurred by the County as a result of this termination by the Contractor, but such costs shall not include County's costs in obtaining an alternative system to or replacement for the On-line System.
- d) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work for such reasons or be unlawful.
- e) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

ARTICLE 28 - CONFIDENTIALITY

- a) All materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement or with respect to which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless such information was previously known to Contractor as shown by its pre-existing records, comes into the public domain without any breach of Contractor's obligations to County or its disclosure is required by law. In addition to the foregoing, all County employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals which is breached by Contractor or Contractor's employees, subcontractors or subcontractor's employees contrary to Contractor's obligations under this Agreement.
- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County, except Contractor may maintain one archival copy of such Confidential Information which is maintained under the direction and control of an officer of Contractor. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 29 - PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein. The County acknowledges that it will have an obligation to protect the On-line System from disclosure and unauthorized use as being the Contractor's proprietary information under Article 46 hereof.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County, except as related to the On-line System (hereinafter "Computer Software"). All third-party license agreements must also be honored by the Contractor and its employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all third party license agreements must also be honored by the Contractors' employees with the approval of the lessor or contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 30 - PROPRIETARY RIGHTS

- a) The County hereby acknowledges and agrees that the County will acquire limited license rights to the On-line System and that, except for County's Confidential Information, Contractor retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein.
- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, and specifications related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall be and remain the property of the Contractor. To the extent the County obtains any right or interest in Developed Works beyond the license rights contemplated by this Agreement, then County agrees to assign and execute any and all assignments and transfers documents reasonably necessary to vest Contractor with all ownership of and proprietary rights in such Developed Works.
- c) Accordingly, the County shall not have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the County, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the Contractor, except as expressly permitted by the terms of the license to the On-line System granted to the County hereunder.
- d) Except as otherwise provided in Article 45 hereof by which Contractor grants County a limited license to the use of the On-line System, the Contractor shall retain all proprietary rights in and to the On-line System licensed to County and provided hereunder.

ARTICLE 31 - BUSINESS APPLICATION AND FORMS

Business Application The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor application and to update the application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county

employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 32 - INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs.

In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 33 - LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".

- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 34 - NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract with the County, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 35 - CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.

- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the reasonable instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 36 - PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; nothing in this paragraph shall preclude Contractor from communicating with its subcontractors and prospective subcontractors for the purpose of performing or arranging for the performance of the Work or any portion of it under this Agreement; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 37 - BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 38 - GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida.

ARTICLE 39 - COUNTY USER ACCESS PROGRAM (UAP)

A. User Access Fee

Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Contract is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from this solicitation and the utilization of the County contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Contractor providing goods or services under this Contract shall invoice the contract price and shall accept as payment thereof the contract price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Vendor participation in this invoice reduction portion of the UAP is mandatory.

B. Joint Purchase

Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Contractor must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Contractor participation in this joint purchase portion of the UAP, however, is voluntary. The Contractor shall notify the ordering entity, in writing, within 3 work days of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Contractor shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

The County shall have no liability to the Contractor for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Contractor and shall be paid by the ordering entity less the 2% UAP.

C. Contractor Compliance

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 24 of this Contract.

ARTICLE 40 – OTHER PROJECTS AND SERVICES

The parties anticipate that from time to time they will be in contact regarding the County's needs for assistance on clearly defined Projects ("Projects") in the areas of business strategy, business integration, business process improvement, training, management development, project management, computer programming, systems integration, data processing, software development and other specific activities related to improving the County's computer systems, training or personnel to operate the same, creation or modification of software, and related consulting activities ("Services

ARTICLE 41 - STATEMENT OF WORK

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ARTICLE 42 – DELIVERY SCHEDULE AND REVIEWING DELIVERABLES

- a) The Services shall be delivered in two distinct phases related to the development of the On-line Arts Grants Application and Management System. The first phase (“Phase I”) shall consist of the development, delivery, testing and launch of and training for the use of the portions of the On-line System which are accessible to and intended to be used by applicants (as defined in Article 10 hereof). The second phase (“Phase II”) shall consist of the development, delivery, testing and launch of and training for the use of the portions of the On-line System which are accessible to and intended to be used by County as the administrator of any grants applied for through the On-line System. Prior to the delivery of any Deliverables related to a particular Phase, Contractor shall deliver the following Deliverables to County:
 - i. Contractor shall consult with the County for overall planning of the Work for the period identified in Appendix “B” (the “Planning Period”), with the first consultation session being an in person meeting at County’s location; and
 - ii. Within five days of the conclusion of the Planning Period, Contractor shall deliver to County a complete written outline of all functionality of the On-line system that will be used to define and create the Specifications for the On-line System (“Functionality Outline”).
- b) Deliverables and each of the following for each Phase of the Work:
 - i. The development of written specifications which describe the functionality, specific features of how each function will be addressed, time and size parameters and other details sufficient to identify both the program tasks necessary to create and to determine whether the Phase conforms to the relevant portions of the Scope of Services (“Specifications”);
 - ii. a completed alpha version of the On-line System which conforms to the Specifications in terms of functionality but may requires additional programming, debugging and fixes to make it fully conform to the Specifications (an “Alpha Version”);
 - iii. a completed beta version of the On-Line System which is a modified and corrected form of the Alpha Version of the On-line system which conforms to the Specifications but may contain areas which require minor debugging and fixes to substantially conform to the Specifications (“a “Beta Version”);
 - iv. a completed, launch ready version of the On-Line System which substantially conforms to all of the Specifications (a “Launch Ready Version”);
 - v. training of County personnel for use of the Launch Ready Version of the On-line System as required by the Scope of Services (“Training”); and
 - vi. The deployment of the Launch Ready Version so that it is available to its intended

users through the world wide web (a "Launch").

- c) The Contractor agrees to submit all Deliverables required to be submitted for review and approval by the County in accordance with the time schedule set forth in Appendix "B" and the specific requirements in the Scope Of Services, and as specified herein.
- d) In reviewing the Deliverables, the County will provide the Contractor with:
 - i. a written notification of the County's approval,
 - ii. a written notification that each Deliverable is approved subject to the Contractor providing prompt correction of a minor deficiency, or,
 - iii. in the case of a Deliverable that does not meet the requirements of the Agreement, a written notification of the County's disapproval. The County's disapproval notification will state with reasonable detail to sufficiently advise the Contractor of the basis on which the Deliverable was determined to be unacceptable.

The County shall be obligated to test the Alpha, Beta and Launch versions of the On-line System within the time frames provided for in Appendix B and shall be obligated to review and approve, conditional approve or reject any Deliverable that requires testing at the end of its testing period or by the time otherwise specified in Appendix B. The County is obligated to accept any Deliverable that substantially conforms to the requirements of this Agreement and is entitled to reject any Deliverable which fails to substantially conform to the requirements of this Agreement. Once Specifications are accepted by County, the parties agree that the approved Specifications shall control and take precedence over the Scope of Services with respect o the definition of the On-line System. County's failure to test the Alpha Version of the On-line System within the required time frame shall be a waiver of its right to test that version of the On-line System unless the reason for failure to test was beyond the County's reasonable control and Contractor will proceed with development of the Beta Version of the On-Line System so that it is delivered on time.

- e) Furthermore for each Deliverable made hereunder:
 - i. the County shall make its determination of whether the Deliverable is approved as submitted, is approved subject to the correction by the Contractor of minor discrepancies, or whether it is unacceptable and therefore disapproved within the times provided in Appendix B.
 - ii. Unless an extension of time has been granted by the County pursuant to Article 57 "Extension of Time", within five business days after receipt of the County's notification of "disapproval", the Contractor shall deliver to the County the necessary revisions and/or modifications for a second review by the County.
 - iii. If after the second review period the Deliverable remains unacceptable for the County's approval, the County may direct the Contractor to:
 - Proceed with the Work subject to the correction of all outstanding

deficiencies which led to the County's determination that a Deliverable was not acceptable for approval on or before a specific date established by the County for correcting such deficiency or deficiencies; or,

- Suspend all Work being performed in regard to the execution of the Agreement, except those services necessary for the correction of outstanding deficiencies, until such time that all such outstanding deficiencies have been corrected by the Contractor and resubmitted to the County for approval. Any suspension of the Work under this provision shall not alter the County's right to assess liquidated damages in the event that the Work is not completed in accordance with other provisions of this Agreement.
- iv. The County shall have the right to approve or accept part of any Deliverable. Any such approval shall be regarded as partial and conditional upon the County's approval or acceptance of all aspects of the Deliverable. The Contractor must correct any deficiencies within the time the County specifies for such correction in the County's notice concerning a partial approval (including approvals subject to correction of minor deficiencies) or, if no time is given, promptly. If the County does not subsequently approve or accept all aspects of the Deliverable, the earlier conditional acceptance or approval may, in the sole absolute discretion of the County, be regarded as void and of no effect.
- f) Notwithstanding any other provision of this Agreement, Contractor's obligation to complete a Launch for any phase of the On-Line System shall be deemed completed upon its timely delivery of the Launch Ready Version of the On-line System for that phase which substantially conforms to the Specifications for that phase regardless of the time County takes to review and approve the Launch Ready Version and provided further Contractor completes the Launch within five (5) business days of the County's approval of the Launch Ready Version for that phase. County's failure to approve the Launch Ready Version of the On-line System which meets the requirements of this Agreement shall delay the Launch for that phase but shall not delay County's payment obligations due upon the Launch for that phase of the On-line System. The parties agree that the timing of payments under the Price Schedule (Appendix "B") is a function of Contractor delivering Deliverables that meet the requirements of this Agreement and not a function of the dates set forth in the Price Schedule.

ARTICLE 43 - DELIVERY AND INSTALLATION

County acknowledges that all Deliverables of the On-line System, including delivery of its phases, are accomplished by Contractor making the Deliverable available to the County through the World Wide Web through specific web sites and passwords assigned to the County. No installation of software on the County's computers, except incidental downloads of code available through the World Wide Web and temporary internet files and cookies arising from use of the On-Line System, is required or contemplated by this Agreement.

ARTICLE 44 – SOFTWARE AND DATA

County acknowledges that the On-Line System consists of web based software, including a browser interface, and data encryption, transmission, access and storage. Contractor does not own any data, information or material that County or County's applicants submit through the On-line System ("Data"). Contractor will not monitor, edit, or disclose any information regarding any Data, without County's prior permission except in accordance with this Agreement. Contractor shall be permitted to provide certain user registration and statistical information such as usage or user traffic patterns in aggregate form to third parties, but such information will not include personally identifying information. Contractor may access the County's account, including its Data, to respond to service or technical problems or as stated in this Agreement. County, and not Contractor, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Data and Contractor shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Data, except as otherwise expressly provided for in this Agreement.

ARTICLE 45 - SOFTWARE LICENSE

The Contractor hereby grants to the County a personal, non-exclusive, non-transferable, limited license for the Initial Contract Term, and any extension of that term as permitted by Article 5 hereof, to use and display the visual information, data, documents, products and software contained in or made available through the On-line System (the "Content"). All rights in the On-line System not expressly granted by Contractor to County under this Agreement are retained by Contractor.

ARTICLE 46 - SCOPE OF LICENSE

- a) The County may use the On-line System on any and all equipment configurations of whatever make, manufacture and/or model, owned, controlled or contracted for, by the County. Irrespective of the number of equipment configuration(s) controlled by the County from which the On-line System is accessed, the County shall pay only the Contract Price and no further fees for such access.
- b) The County is permitted to store, manipulate, analyze, reformat, print, and display the Content accessible through the On-line System solely for the County's internal business purposes in carrying out the purposes and mission of the County's Department of Cultural Affairs. Unauthorized use of the On-line System or Content, or the resale of the right to use the On-line System (directly or through its use to provide services to others), is expressly prohibited. The County shall not copy, license, sell, transfer, make available, distribute, or assign this license or the Content to any third party. The County also shall not "mirror" any Content contained on, or accessible from, the On-line System on any other server or Internet-based device.

ARTICLE 47 - SOFTWARE RELATED DOCUMENTATION

The On-line System-related documentation ("Documentation") will consist of the manuals, instructions, help screens and other aids accessible through and part of the On-line System.

ARTICLE 48 - SOFTWARE REVISIONS

The County shall have no right to independently modify the On-line System or any part of it. Any modifications of the On-line System must be performed by Contractor and shall be carried out as provided for in Article 49 hereof.

ARTICLE 49 - SOFTWARE ENHANCEMENTS/MODIFICATION

The Contractor understands the County may require changes to the On-line System which are outside the Scope of Services. When requested by the County, the Contractor shall provide the requested system enhancements/modifications under the terms of this Article and Article 60—"Changes and Extra Work" hereof. Upon the County's request for such enhancements/modifications the County shall prepare a scope of work and the Contractor shall submit a cost proposal including all costs pertaining to furnishing the County with the enhancements/modifications.

Thereafter the County and the Contractor shall agree to a price for the requested modification/enhancement. The Contractor shall have no obligation to provide modifications or enhancements unless the parties agree on the price and all other terms. In no event shall the Contractor perform any work on the task unless the County issues a written notice to the Contractor to proceed with the task. The Contractor shall not be reimbursed for the preparation of proposals.

When the enhancement or modification is completed, tested and accepted by the County, the Contractor shall include it as part of the On-line System available to County. Contractor shall own all proprietary rights to any such modifications and enhancements and County's only rights therein shall be its license rights to the On-line System by virtue of the inclusion of such modifications and enhancements as part of the On-line System.

ARTICLE 50 - OWNERSHIP OF LICENSED SOFTWARE

- a) The Contractor hereby warrants and represents that the Contractor possesses all rights to and interests in the On-line System, and all portions thereof, or otherwise has the right to grant to the County the licenses provided in Articles 44, 45, 46 and 47 "Software and Data", "Software License", "Scope of License", and "Software Related Documentation", respectively, hereof, without violating any rights of any third party, and there are currently no actual or threatened suits by any such third parties based on an alleged violation of such rights by the Contractor. The Contractor shall require that all suppliers of third party software hereunder furnish to the County the foregoing warranties of ownership with respect to the third party software.
- b) Except for the licenses granted herein, the County has no right, title or interest in or to the On-line System or any Content, including, without limitation, any stories, articles, text, images, and other multimedia data.
- c) County agrees to abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with the use of the On-line System. In addition, without limitation, County agrees not to use the On-line System to: (i) in connection with sending unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of duplicative or unsolicited messages, whether commercial or otherwise; (ii) harvest, collect, gather or assemble information or data regarding other users, including e-mail addresses, without their consent; (iii) transmit through or post unlawful, harassing, libelous, abusive, harassing, tortious, defamatory, threatening, harmful, abusive, libelous, invasive of another's privacy, vulgar, obscene or otherwise objectionable material of

any kind or nature or which is harmful to minors in any way; (iv) transmit any material that may infringe the intellectual property rights or other rights of third parties, including trademark, copyright or right of publicity; (v) transmit any material that contains software viruses or other harmful or deleterious computer code, files or programs such as trojan horses, worms, time bombs, cancelbots; (vi) interfere with or disrupt servers or networks connected to the Service or violate the regulations, policies or procedures of such networks; or (vii) attempt to gain unauthorized access to other accounts, computer systems or networks connected to the On-line System through password mining or any other means.

ARTICLE 51 - SOFTWARE WARRANTIES

In addition to warranties of title made elsewhere in this Agreement, Contractor warrants that the On-line System will perform substantially as described in the Specifications for the Software Warranty Period, as defined below. EXCEPT FOR CONTRACTOR'S EXPRESS WARRANTIES UNDER THIS AGREEMENT, CONTRACTOR MAKES NO OTHER WARRANTIES WHETHER IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY CONTRACTOR.

ARTICLE 52 - SOFTWARE WARRANTY PERIOD

The Contractor warrants that for a period of ninety (90) days from the County's final acceptance of each Phase of the On-line System, being indicated by the County's authorization to Launch a Phase of the On-line System (the "Software Warranty Period"), the launched Phase of the On-line System shall (i) be free from defects in material and workmanship (bugs) under normal use and remain in good working order; and (ii) function properly and in conformity with the Specification.

In the event the On-line System does not perform as expressly warranted by Contractor, then Contractor's obligation is to provide a fix or a work around at the Contractor's cost and expense, or to provide different software and services required to attain the performance requirements set forth in the Contractor's express warranty. Failure by the Contractor to comply with warranty provisions hereof may be deemed by the County as a breach of the Contractor's obligations hereof.

Performance problems after the expiration of the period of Contractor's express warranty shall be addressed as provide for in Article 60—"Maintenance Services" hereof.

ARTICLE 53 - SYSTEM(S) WARRANTIES

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ARTICLE 54 - EQUIPMENT WARRANTY

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ARTICLE 55 - THIRD PARTY WARRANTIES

In addition to the foregoing warranties, the Contractor hereby assigns to the County, and the County shall have the benefit of, any and all subcontractor's and suppliers' warranties and representations

with respect to the On-line System provided hereunder. In the Contractor's agreements with subcontractors and suppliers, the Contractor shall require that such parties (i) consent to the assignment of such warranties and representations to the County; (ii) agree that such warranties and representations are enforceable by the County in its own name; and (iii) furnish to the County, the warranties and obligations as set forth in Articles 51 "Software Warranties", and 52 "Software Warranty Period". Without derogation of the foregoing, Contractor hereby states that the majority, if not all of the industry based subcontractor warranties that is has obtained in the past and that it anticipates obtaining with respect to development of the On-line System under this Agreement, will provide for a thirty (30) day warranty period from the date of each subcontractor's delivery to Contractor and as a result such subcontractor warranties will have expired prior to Contractor's presenting Deliverables to County for its approval under this Agreement.

ARTICLE 56 – TESTS

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ARTICLE 57 - EXTENSION OF TIME

- a) If the Contractor is delayed at any time hereunder due to any of the following then the affected schedule or the required performance of Work may be extended by the County in the reasonable exercise of its discretion for such reasonable time as the County may determine, subject to the following conditions:
 - i. The cause of the delay is beyond the Contractor's control and arises without its fault or negligence, and arises after the execution hereof and neither was nor could have been anticipated by the Contractor by reasonable investigation; and
 - ii. The completion of the Work will be actually and necessarily delayed by the causes set forth in "i" above; and
 - iii. The effect of such cause cannot be avoided or mitigated by the exercise of all reasonable precautions, efforts and measures whether before or after the occurrence of the cause of delay; and
 - iv. The Contractor has provided a written request and other information to the County, as described in subsection (d) below, within twenty (20) days after the time the Contractor knows or reasonably should have known of any cause which might result in a delay for which the Contractor may request an extension of time. The Contractor shall specifically state in such notice that an extension is or may be requested and identify the cause of the delay, describing the nature and its effect on the completion of the affected portions of the Work identified in the notice. If the Contractor shall fail to give the foregoing notice, the right to request an extension for such cause shall be waived. All of the conditions of this subsection (a) must be met in order to be deemed an Excusable Delay.
- b) All references in this Article to the Contractor shall be deemed to include subcontractors and suppliers, all of whom shall be considered as agents of the Contractor.

- c) The period of any extension of time shall be only that which is necessary to make up the time actually lost. The County reserves the right to rescind or shorten any extension previously granted if the County subsequently determines that any information provided by the Contractor in support of its request for an extension of time was erroneous or that there has been a material change in the facts stated.
- d) The County may require the Contractor to furnish such additional information or documentation, as the County shall reasonably deem necessary or helpful in considering a extension request. The Contractor understands an extension of time will not be granted unless the Contractor affirmatively demonstrates to the County's reasonable satisfaction that the circumstances shown justify such extension.
- e) Within thirty (30) days of its receipt of all information and documentation as may be required by the County, the County shall advise the Contractor of its decision on such requested extension. Notwithstanding the foregoing, where it is not reasonably practicable for the County to render its decision within such thirty (30) day period, it shall, prior to the expiration of such period, advise the Contractor that it will require additional time and the approximate date upon which it expects to render such decision.
- f) Since the granting of an extension of time may materially alter the scheduling plans and other actions of the County and since, with sufficient notice, the County might, if it should so elect, attempt to mitigate the effect of the delay for which an extension of time might be claimed, and since mere oral notice may cause a dispute as to the existence or substance thereof, the giving of written notice as required in subparagraph (a.) (iv.) above shall be a condition precedent to the Contractor's rights hereunder.
- g) Should any person seek a restraining order, preliminary injunction or an injunction, of which the Contractor becomes aware, which may delay the Services, the Contractor shall promptly give the County a copy of all legal papers received or prepared or received by the Contractor in connection with such action or proceeding.
- h) Notwithstanding any other provision of this Article 57, in the event County is delayed or late in providing its approvals or completing its reviews or testing as required under this Agreement, Contractor's time to perform shall be extended by one (1) business day for each day County is delayed or late in providing its approvals or completing its reviews or testing as required under this Agreement.
- i) Neither permitting the Contractor to proceed with the Work subsequent to any missed schedule or performance of any Work (as such date may have been extended pursuant to Article 58 "Extension of Time Not Cumulative") nor the making of any payments to the Contractor shall compromise the County's contractual right to assess liquidated damages or to declare the Contractor in default.

ARTICLE 58 - EXTENSION OF TIME NOT CUMULATIVE

In the event the Contractor shall be delayed concurrently by two or more of the causes identified in Article 57 "Extension of Time", paragraphs a) through g), above, the Contractor shall be entitled to a separate extension of time for each one of the causes but only one period of extension shall be

granted for the delay. In addition, except for delays caused by the County as described in paragraph h) of Article 57, the Contractor shall not be entitled, by reason of a delay, to an extension of time for the completion of the overall Work unless the overall Work is necessarily affected by the delay. Accordingly, in the event of a delay, the Contractor shall proceed continuously and diligently with the performance of the unaffected portions of the Work.

ARTICLE 59 - NO DAMAGES FOR DELAY

The Contractor hereby agrees to make no claim for damages for delay, whether contemplated or not contemplated, in the performance hereunder occasioned by any acts or omissions to act of the County, or any of its representatives or other contractors, and agree that any such claim shall be fully compensated for by an extension of time to complete performance of the Work, as provided for in Articles 57, 58, and 59 "Extension of Time", Extension of "Time Not Cumulative", and "No Damages for Delay".

ARTICLE 60 - CHANGES AND EXTRA WORK

- a) The County reserves the right to order changes which may result in additions to, reductions to or deletions from the amount, type or value of the Work required by this Agreement as provided for in this Article. Any such work shall be known as "Extra Work". It is understood and agreed by the Contractor that the amount to be paid or deducted from payment by the County for Extra Work shall be computed on the basis of the applicable rates set forth in the Price Schedule for equivalent items. Extra Work consisting of reductions to the Work so ordered must be performed by the Contractor, subject to any change in warranties or the Specifications necessarily caused by such Extra Work. Extra Work consisting of additions to the Work shall only be performed if agreed to by both parties.
- b) No Extra Work shall be performed except pursuant to written orders of the Project Manager expressly and unmistakably indicating his intention to treat the work described therein as Extra Work and, if the Extra Work involves additions to the Work, if agreed to in writing by Contractor. .
- c) No change in or modification, termination or discharge of this Agreement in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith or his duly authorized representative; provided, however, that any change in or modification, termination or discharge of this Agreement, expressly provided for in this Agreement shall be effective as so provided. The County may only be bound hereunder by a properly authorized officer of the County.
- d) In the event that the County shall order Extra Work which consists of a reduction in the Work for which there are no applicable rates set forth in the Price Schedule for equivalent items, it is understood and agreed by the Contractor that the County and the Contractor shall negotiate a mutually agreeable price to be deducted by the County for the Contractor's performance of such Extra Work which results in a reduction in the Work.

ARTICLE 61 - MAINTENANCE SERVICES

During the Software Warranty Period, Contractor shall provide maintenance services for the On-line

System, as described in paragraph a) of this Article, to the County at no additional cost. Thereafter, the Contractor shall provide maintenance services for the Initial Contract Term, and any extension of that term as permitted by Article 5 hereof, as described in paragraphs b) through d) of this Article for the annual fee set forth in the Price Schedule. Payment of the annual fee for maintenance services, described in the Price Schedule as Maintenance and Technical Support, shall be due at the times set forth in Appendix "B".

- a. Contractor shall maintain the On-line System in good condition and working order and in conformity with the warranties set forth herein and the Specifications.
- b. After the expiration of the Software Warranty Period, Contractor shall provide maintenance and technical support as follows:
 - i. Contractor shall provide phone-based support to the County's staff members. Contractor shall assess additional charges, at the rates set forth in the Price Schedule, to the County for the provision of this telephone support if the logged hours exceed ten (10) hours of telephone support in any one calendar month;
 - ii. Contractor will provide Tier 2 technical support for the County's grant applicants. Tier 2 support is defined as support provided by Contractor to the County's grant applicants when the County's staff cannot answer an applicant's technical question and to assist with applicant data issues as described later in this paragraph. Contractor will charge County for Tier 2 technical support at the rate set forth in Appendix "B" if the logged hours for Tier 2 technical support exceed ten (10) hours of support in any one calendar month. Contractor is not responsible for answering programmatic grant questions posed by the County's grant applicants. Those applicants will be redirected to the County's staff.
 - iii. With respect to Tier 2 technical support, the County is responsible for assisting applicants with:
 - o Items related to programmatic elements of the grant application;
 - o Grant eligibility and policy issues;
 - o Specific questions and answers relating to the application form, which may include inquiries regarding the purpose of the question, etc.;
 - o Navigating through the On-line System site;
 - o Creating e-mail accounts (through Yahoo or Hotmail, etc.) and downloading Adobe Acrobat Reader for proper display of grant applications (pdf);
 - o Assisting with username and password retrieval for applicants;
 - o Technical questions that fall within staff members' ability.
 - o Creating/updating application questions, forms, instructions.

Contractor will provide Tier 2 support/technical assistance for the following types of applicant issues:

- o Assisting applicants with data issues
- o lost data
- o cached data
- o cookies
- o temporary files
- o Internet and browser-related issues

- iv. Technical and Tier 2 support is offered by telephone or email between the hours of 8:30 AM MT until 5:00 PM MT Monday through Friday, excluding holidays. After-hours technical support can be scheduled on a case by case basis and must be reserved in advance. After-hours technical support will be charged to the County at the rates set forth in the Price Schedule.
- c. Bugs in the On-line System shall be reported to Contractor via the "Ticket" functionality offered in the On-Line System administrative tool module. Contractor reserves the right to determine the urgency of bug fixes and implement said fixes accordingly. Contractor does not charge for bug fixes, except in the event the County requests that a fix be implemented before Contractor's scheduled date for such fix to be installed. Charges are as set forth in the Price Schedule. As used in this Agreement, a "bug" is an error, flaw, mistake, failure, or fault in the computer program that prevents it from working as intended. For example, if a system error message is displayed during use of the system, either on the applicant side or the administrative side, this is a bug.
- d. Any and all enhancements to existing functionality that are designed and implemented by Contractor for users of its basic Culture Grants Online™ system will be offered to the County at no charge. Any enhancements developed at the County's request will be developed and charged for as set forth in Article 49—"Software Enhancements/Modification". All enhancements incorporated into the On-line System, including those developed at the County's cost, are proprietary to Contractor and licensed to the County as part of the On-line System under this Agreement. As used in this Agreement, an "enhancement" is coding that changes functionality or site features from those that currently exist.

ARTICLE 62 - SURVIVAL

The parties acknowledge that any of the obligations in this Agreement which apply to periods following the termination or expiration of the term of this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Western States Arts Federation

Miami-Dade County

By: [Signature]

By: [Signature]

Name: Shannon Daut

Name: Amos C. Roundtree
for Miriam Singer

Title: Associate Director

Title: Director

Date: 25 March 2008

Date: 28 April 2008

Attest: [Signature]
Corporate Secretary/Notary Public

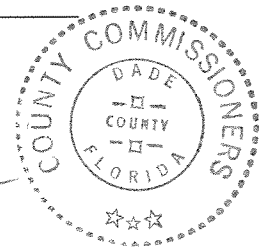
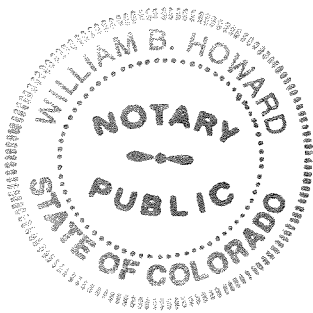
Attest: [Signature]
Clerk of the Board

My Commission Expires 12/01/2009

~~Corporate Seal/Notary Seal~~

Approved as to form
and legal sufficiency

[Signature]
Assistant County Attorney



APPENDIX A

SCOPE OF SERVICES

WESTAF's Management Approach, Customization, Training, Maintenance, and Technical Support

- A. *Describe project plan, methodology, and recommend solutions in performing the services described in the Scope of Services (Section 2.0). Describe approach to the project organization and management, responsibilities of WESTAF's management and staff personnel that will perform work in this project.*

WESTAF's project plan is based on upon future requirements; however this plan generally consists of a detailed document that outlines communication protocol among stakeholders, agreed upon cost and scope as well as milestones to be met. WESTAF takes a proactive role in project management, ensuring the project plan is adhered to. Development methodology leans towards the adaptive side of the spectrum rather than the predictive, as we realize requirements are in constant flux and more importantly, are never fully realized prior to the construction of a software project. While we recognize the utility in generating requirements as detailed as possible prior to project commencement, we also realize that these will need to be updated as needs can only be fully realized upon using the new system. As a result of this our development team will produce functionality in predefined modules that will pass defined unit tests, making this functionality available to the client to test these portions of the web application as they are completed. This iterative process ensures that all issues are realized as quickly as possible and also ensures that the entire system is delivered in properly functioning state. The proposed System is developed in this adaptively modular fashion, which minimizes dependencies between modules, reducing unintended side effects, as well as providing for upgrades to portions of the System without affecting the entire System. By adhering to this methodology we can be sure that we are providing reliable software that meets the needs of our clients.

The CultureGrants OnlineSM project team will consist of: Miami-Dade Cultural Affairs Staff, Chris DiBartolo, WESTAF Senior Director of Technology, Seyan Lucero, WESTAF Technology Associate, Paul Nguyen, WESTAF Technology Assistant, and Shannon Daut, WESTAF Associate Director and WESTAF's principal subcontractor, Software Developers, located in Mumbai, India. The team meets on a weekly basis to discuss the status of the CultureGrants OnlineSM projects. WESTAF is responsible for ensuring that the development of all CultureGrants OnlineSM projects proceeds on schedule.

Chris DiBartolo will be the primary contact and chief architect of the system. DiBartolo will follow all aspects of the build from client consultation to final deployment and is the primary contact between WESTAF and the client. He has extensive experience in web application architecture, design and development, having most recently served as a consultant focusing on enterprise application integration for one of the world's premier technology consulting firms. DiBartolo has also served as the lead architect on multiple web development projects.

Seyan Lucero will work with the team on system conceptualization and implementation. She will also be responsible for helping document system development, tracking bugs, and follow up with the programming team throughout the development cycle. Lucero has been integral in the development of seven CultureGrants OnlineSM clients, and has been the primary contact and lead project manager for CGOSM systems developed for the Indiana Arts Commission and the Kentucky Arts Council.

Paul Nguyen will work with the team to assist in the documentation of system development, testing, and programmer communication.

Shannon Daut will work with the team on the conceptualization and deployment of the CGOSM system, and will ensure that the project is deployed on time and within budget. Daut is responsible for the implementation of streamlined, efficient protocols for development of WESTAF's technology systems.

Software Developers, WESTAF's subcontractor for programming, is led by the following principles:

Rajdeep Srivastav, Director, Manav Sain, VP – Business Solutions and Amjad Pendhari, Chief Technical Architect.

Further information regarding the subcontractors can be provided upon request.

B. Description of level of software customization WESTAF will be performing in order to meet the requirements of the solicitation's Scope of Services.

WESTAF will be performing some level of software customization for the entire Scope of Services. The proposed System will require the configuration of existing modules to meet client requirements. In most cases this is a minimal amount of customization, requiring only modification of small portions of each module. However, in isolated cases modules do not yet exist, and will require new development and complete customization to implement new functionality. Please see Attachment A for a detailed description of these modules.

C. Detailed description of training courses that WESTAF is offering as part of the Proposal to the County. Provide recommended number of on-site training hours as well as any other type of training, including, but not limited to, online tutorials, webinar training (if available), training documentation, etc.

Training and Documentation: WESTAF provides extensive training to agency staff, both via phone and in-person. Per this proposal, WESTAF will provide two days of on-site training for up to 25 staff members. Additional in-person training may be provided upon request, the rates for which can be negotiated. Training on CultureGrants OnlineSM will be supported with documentation of the system through an administrative user manual that will be distributed to agency staff.

D. Detailed description of WESTAF's technical support services including phone and email support, response times, escalation procedures, days and hours available, etc.

System Support: WESTAF provides rapid tech support for its clients. Support is available through a toll-free number. The service time for such support is 8:30 a.m. to 5:00 p.m. Mountain Time, Monday through Friday. **Special availability for after hours, weekend and holiday grant deadlines are available by arrangement.** On an average day, three full-time staff members are available to provide system support; as a result, response times to technical support queries are quite low. As a CultureGrants OnlineSM client, you will also receive information regarding after-hours emergency tech support, which lists contact numbers for emergencies that may occur outside of business hours.

Ongoing support will be provided by the core tech team but can also be provided by other WESTAF staff members.

E. Description of WESTAF's approach to system maintenance, including policy regarding new software releases, software upgrades, updates, patches, bug fixes, optional software features, etc. Specify which are included in as part of the proposed system

WESTAF includes system maintenance as part of the proposed System. This includes all upgrades to hardware and software to the extent that the functionality is applicable to all clients using the CultureGrants OnlineSM System. These software upgrades, updates, and patches do not currently have formally defined schedule, but are made available to clients as they become available. Optional software features not yet built are available to CultureGrants OnlineSM clients when applicable and under pricing structures not outlined in this document. Bugs fixes tend to be a source of confusion among users and as a result are defined as follows: Bugs are flaws in the software design, source code, or compiler that prevent intended outcomes. Bugs discovered within the first 30 days of deployment of the covered software will be resolved as part of the pricing structure outlined in this document. Bugs discovered after 30 days from deployment date will be resolved according to the hourly price structure outlined in this document.

F. Tentative implementation schedule identifying specific key tasks and duration, to include, but not be limited to, system deployment, customization, testing, and operational "go live" dates.

Timeline and Deliverables

1) Client Consultation—3-6 months. Intensive initial consultation with new clients provides the framework around which the grant application system is developed. This process often brings to light efficiencies that can be enjoyed by the grant applicant and also the grant administrator. In addition, the process helps surface misunderstandings and misconceptions regarding the needs of the client and the ability of WESTAF to successfully meet those needs. During this consultation period, all grant programs administered by the agency are reviewed together by WESTAF and the client. All proposed pages are analyzed and categorized. Whenever possible, existing code sets are adapted for use in the new system. Substantial client involvement in the process is essential. While WESTAF has extensive experience in grant system development and a deep understanding of grant making, a particular public arts agency may wish to incorporate specific features into the software.

2) Specification Development—6-9 months. WESTAF will produce a full specification document that outlines the full data and feature set that the client's system will comprise. At this point a firm cost will be delivered for approval by the client. Once approval has been given by client, system development will begin.

3) System Development—9-12 months. System development is achieved through the following steps:

- a) Application Form Development: WESTAF first builds out the front end application Information collection tool. This collection tool informs the development and the design of the relationships in the administrative side of the system
- b) Administrative Tool Development: After the collection tools are built, the desired administrative modules are implemented in the system.
- c) Alpha Testing: Alpha testing is typically managed in-house at the WESTAF offices; alpha testing will discover and remedy most bugs in the system.
- d) Beta Testing: WESTAF, the client, and selected end-users of the system will perform beta-testing, the phase in which bugs and obvious usability issues are identified and fixed. During the beta testing period, the system is nearly clean of bugs.
- e) Pre-release: Pre-release occurs when testing on the staging server is complete and the

client is ready for the system to be deployed on the production server. This action does not represent full release to the public; rather, it is the conclusion of the software development phase of the project.

- f) Final-release: The final release (deployment) step represents the “Go-Live” date when the software is released for public use.
- g) Post-release: Client will have a 30-day warrantee on bugs that may appear in the system after its release. WESTAF will work with the client to identify and fix bugs as needed. WESTAF provides user support via a toll free number.

Please note that the timeline outlined above assumes active engagement and timely responses from the client. Any delays due to client unresponsiveness may result in a lengthened timeline.

G. Sample reports that the proposed system will generate

WESTAF will develop reports in consultation with the client. Several reports, such as the NEA Federal Data Report and panel book pdf files, come standard in the system. Further, all data collected through the system is available for export in an Excel or tab-delimited format. Due to the voluminous nature of the reports, copies are available upon request.

General Functional System Specifications

The CultureGrants OnlineSM System is a web-based application that provides users the ability to apply, modify and submit reports for grants. The system also provides users the ability to monitor, update, and print reports based on grants. The Proposed System will provide additional functionality beyond the existing CultureGrants OnlineSM System, including enhanced role based functionality and conflict management, compliance tracking, customization of grant applications, extensive historical tracking of grants and applications, an updatable help system, extended support material functionality, automated electronic communication, queries to support searching functionality, generation of data for hard copy materials, and refined data extraction capabilities.

The Proposed System will provide the following functionalities:

1. Read-only access to the database for purposes of monitoring its contents;
2. Real-time, on-line access by applicants, grantees, and department staff to applicant contact information;
3. 24/7 real-time on-line access to grant applications by applicants and grantees, except for scheduled downtime;
4. 24/7 real-time on-line access to the system by department staff, except for scheduled downtime;
5. Ability for users to change their password in real-time and immediately log-in afterwards;
6. Appropriate department staff to reset user passwords and/or usernames if requested by user;
8. Secure, unique user identifications and passwords for each user;
8. Ability to monitor and manage the administrative details of these grants based on user roles and permissions;
9. Assignment of program administrators and program officers, by department staff, to specific grant programs;
10. An on-line application review process with tools for assigning panelists to particular grant panels, providing secure access for these Panelists to review grant Application data and any scanned support materials, as well as maintaining contact information for these panelists;

11. Ability for system users to save work in progress and return at a later time to make modifications;
12. Ability to limit grant Application access based on period of time;
13. Ability to upload general support materials and associate them with grant applications;
14. Ability to create, maintain and assign records for grant panelists;
15. Ability to implement a panel review using a to be established scoring system;
16. Ability to assign program administrators and program officers to specific grant programs;
17. On-line help tips and FAQ available to all Users;
18. Grant management reporting and compliance tracking tools;
19. A generic query tool for the construction of custom queries;
20. Tools for extracting and exporting all of the data (or subsets thereof);
21. Safe, secure, and reliable vendor hosted solution;
22. Frequent database and system software backup and hardware redundancy systems and procedures;
23. Ability to easily expand and create new grants programs. The system will allow administrators to create new grant programs as needed, without the need for programmer's intervention. This functionality will allow administrators to create programs and application pages, narrative and other types of application questions, budgets, "help" tips and final report forms as needed by the agency. These pages can be created "on the fly" by grant administrators with appropriate access—which can be determined by the agency—to do so.
24. The system website will have a look and feel consistent with the existing department website (<http://www.miamidadearts.org>). It will display the county's name and such other trade dress (e.g., logos, introductory statement from county, etc.) as directed by the county.

ii) Grantee Access

The system will provide the following functionality for grantees:

1. Provide access and restrictions to grantees as follows: organizations shall have access to grants for organizations only, while individuals shall have access to grants for individuals only;
2. Allow applicants to save changes within an application, including saves when moving from page to page (preferably using an appropriately labeled button);
3. Allow users to save a partially completed form for later editing prior to leaving the on-line session. (However, once the application has been submitted it will no longer be editable by applicant unless access is authorized by department staff);
4. Provide applicants ability to make corrections to budgets or narratives when requested to do so by department staff who will grant permission to do so;
5. Allow applicants and grantees to view all grant award information, specifically reflecting eligibility, grant award and payments that have been requested and/or paid;
6. Ability to print a copy of a completed or partially completed application at any point in the on-line grant process;
7. Provide organization grantees with a mechanism for adding an individual as an "associate" of the organization. (These "associates" most often serve as the contact person for grants the organization receives from the department); and

8. Provide organization grantees with the ability to change basic contact information on a particular grant. This is the only information that the grantee will be allowed to change at anytime within the grant period.

iii) Support Materials

The web interface of the proposed system will provide mechanisms for uploading digital media and electronic files and associating them with the corresponding grant application or final report. The applicant will be responsible for creating the digital media or files to be uploaded from the original materials. Support materials may include, but are not limited to, PDF files, MS Office documents, digitized media files, scanned brochures and scanned support letters. All support materials will be viewable on the system by panelists accessing applications for review.

iv) Grantee Reporting

The proposed system will provide the grantee with the following functionality:

1. Ability to create and submit an on-line "Grant Amendment Request."
 - a. These requests will allow certain modifications to the grant budget, changes to the start and end dates of the grant, and changes to the program or performers that will be presented under the grant.
 - b. When the grantee submits this form, it will be presented to department staff for review. After review, department staff may decline the changes, keeping the details of the grant unchanged, they may accept the changes or they may request that the grantee modify their request
 - c. In this last instance department staff will have the ability to comment on the grantee's request
3. Email notification will be sent to the grantee detailing the results of the request, whether that is acceptance, rejection or modification requests.
4. Department staff will have the ability to open the grant amendment request for re-editing by the grantee if an approved modification request.
5. Once a request is approved by department staff, the system will update the proposal budget, narrative, or start and end dates according to the contents of the grant amendment request, as well as log the acceptance in the grant record.
6. The system will allow grantees to complete both interim and final reporting.
 - a. Grantee will submit this report to department staff for review. This reporting process will also contain the ability to electronically attach support materials such as scanned cancelled checks, public relations and marketing materials, etc.
 - b. The department staff may choose to accept the report, indicate problems with the report, request corrections, or may reject it completely.
7. The grantee will be informed of the results of the review by electronic correspondence or via physically mailed letters, depending on yet to be defined rules.
8. The grantee will have the opportunity to correct any problems that may exist in the report.
9. Once the department staff has accepted the report, the grant file enters a 'closed' status indicating the process is complete.

v) Fiscal Agents

The web application will ensure the proper data structure and business rules to enforce distinct fiscal agent and grantee roles when necessary. This division of roles currently exists when universities channel all grant funds through one department, usually called "sponsored research," which manages those funds for the department that is actually doing the project being funded by the grant. Additionally many smaller emerging organizations that lack a 501(c)3 designation may utilize a larger, well established arts institution or civic group as their fiscal agent. In cases other than these, organizations and individuals act as the fiscal agent as well as the grantee.

Distinct contact information will be maintained for both roles; the fiscal agent and the grantee department/organization. Department staff will have the ability to define rules so that correspondence and payments are routed to the correct department/organization or division.

Current rules state that fiscal agents, typically not the applicant organization, may, under certain circumstances, need to make an application for a grant. These fiscal agents would qualify for a grant with the department and will have access to apply. Sub-organizations under the fiscal agent will always have access to the grants available, but will never be the direct recipient of the grant funds.

vi) Application Management by the Grantee

When applying for a grant, the applicant will be provided with a list of grants that pertain to them. The proposed system will provide the following:

1. Individuals will have access to see only their specific grants, while organizations will be able to view only grants available to organizations.
2. After selecting the grant for which to apply, the grantee will be presented with a sequence of screens, each containing a manageable portion of the Application, with relevant data on single, clearly readable forms.
3. Each "page" can be saved when completed, with the option provided to force the save of an incomplete page. These completed pages will still be available for editing until the application is submitted.
4. The proposed system will allow department staff to enable specific portions of the application for editing by the grantee after the application has been submitted. An example of this is the proposal budget if the department staff determines that the submitted budget information is incomplete or incorrect.

vii) Managing Panelist Data

The proposed system database must manage panelists in several ways, in each case maintaining contact information specific to that individual. Individuals may be associated with an organization, or they may have no organization affiliation. In addition, individuals may serve as grant review panel members, whether or not they are associated with an organization.

For example, an individual may be the artistic director of a historic preservation organization receiving grants from the department, while simultaneously serving as the fiscal agent contact for a small museum, and as a grant review panelist. Under these circumstances, as a panelist, the individual may have to abstain from voting or commenting on the application of an organization or individual with which that panel member has a relationship that could be construed as a conflict of interest.

The proposed system can provide the following functionality:

1. Mechanisms in place to deal with these conflicts.
 - a. The department will provide the current documents utilized, such as the "Conflict of Interest" form.
 - b. This information will be made available to the panelist during the panel review process. As with any other individuals, panelists must be able to update their contact information.
 - c. In addition, the system will include an on-line mechanism for issuing various correspondences to panelists, including requests for potential panelists to serve, as well as a way for them to accept or decline these requests.
2. The system will provide department staff the tools for assigning panelists to a particular panel.
 - a. This assignment will then provide the panelist with access to the grants that are to be reviewed, as well as mechanisms for scoring the grants.
 - b. Panelists will also have a mechanism to indicate a conflict of interest regarding the review of applications from organizations that the panelist holds in conflict.

3. Tools will be provided that allow department staff to collect scores, average them, and determine preliminary eligibility for each of the grants.

4. The panel, upon reviewing the preliminary scores and funding recommendations, may decide to increase the minimum score level in order to better support the remaining applicants with the available funds. While these decisions will most likely be made at the panel review meeting, the results of these decisions can be reflected in the grant records themselves.

5. Department staff will be provided with the tools for adjusting applicant scores and changing award amounts to reflect any changes that may occur during the panel process.

viii) Program Administrator tools for grants management

The proposed system will provide the following functionality:

1. Department staff shall be provided with tools for assigning specific grant areas to specific program administrators.
2. After being assigned to this group of grants, the program administrator will be provided with tools for viewing all the data available on any of the grants in their section.
3. The system will allow the program administrator to review grant amendment requests made by the grantee, as well as the final report submitted at the end of the grant period.
4. The program administrator will be able to accept the report/request, ask for modifications, or simply decline to accept the request/report.
5. Once the final report has been accepted, the grant records can be archived. These archival records will be available for queries into historical issues, and will be available for such queries for at least 3 years after the grant has been closed.

ix) Department staff Tools for Managing System Database

The proposed system will provide access to the live database via a web browser only. The proposed system will provide the following functionality:

1. Program officers will be allowed read-only access records in the database via a web browser.
2. Program officers will also be able to make some changes to the database by accepting grant amendment requests and final reports via a web browser. Any additional changes via a web browser will be managed by program administrators.
3. The system will allow the program administrator to make modular changes to the database via a web browser. Access to changing data via a web browser will be based on defined roles.
3. Grant applicants and department staff will be able to modify applicant contact information via a web browser.
4. Department staff, based on defined roles, will be able to modify information maintained in the database via a web browser.

x) Help Screens

The proposed system will provide the following functionality:

1. The system will provide users with a help screen that details the purpose and use of the system.
2. Each field in a form/page will provide for a tip box detailing the particular information that should be provided in that field, as needed and determined by the department staff.
3. These tip box and help screens will be modifiable by department staff so that changes in procedure can be documented in the proper help screen without the need for programmer intervention or additional software code.

This does not include any ability to change the structure of the form or the fields in the page, but only to improve or change the description of the criteria for populating the fields of an existing form. In other words, the form shall not change, but the contents allowed will change. This situation shall deem it necessary for the program administrator to re-write the help screen to reflect these changes.

xi) Compliance Tracking

The system will be able to track all grants throughout the entire lifecycle.

In the lifecycle of a grant there are several milestones that require notification to the grantee about conditions or problems with the current state of their grant. All communication will be conducted electronically, but the system will also provide an option for communications to be printed if a hard copy notification is required.

The proposed system will provide the following functionality:

1. If the Application is accepted, is eligible, and set to be reviewed by a panel, a notification will be provided by e-mail when department staff determines that the application is complete and technically eligible. This notification will occur automatically based upon the applicant being placed in the appropriate status.
2. Applications that have been determined to be ineligible and un-repairable will be marked ineligible by department staff. This action will result in the ability to generate an electronic notification to the applicant including information as composed by department staff.
3. After the panel review, some grants will be recommended for funding, and others will not. Those not recommended for funding will receive a "Non-Funded" letter that can be printed from the system to be physically mailed.
4. While the funded grants will be set to a funded status, the letter announcing the grant cannot be sent until the Miami-Dade County Cultural Affairs Council reviews and accepts the panel recommendation. Once the award recommendations are presented and approved by the Miami-Dade County Board of County Commissioners, the grantee can be officially notified of their award. This will be done by physical letter generated from the system and delivered in a package of contract documents and instructions also generated from the system to be completed and returned by the grantee. This contract package will require signatures and notarization.
5. The System will provide department staff the ability to log when the award documents are returned by the grantee into the grant record. If the documents are incomplete or incorrectly signed, an informative "Award Document Problem" letter can be generated by the system to be emailed or physically mailed to the grantee.
7. Under specified conditions, grants may be rescinded. This situation will require additional notification to the grantee and a change in the status of the grant. The system will generate this notification and have the ability to allow staff to record the required information on the rejection.
8. The system will provide the department with a status of open grants.
 - a. When the grantee receives their payments on the grant through the grant period, and the project end date arrives, the system shall produce a reminder letter informing the grantee that their final report is due in the next 45 days.
 - b. Grantees will submit the final report on-line along with the ability to upload support documentation in the form of electronic files.
9. If the final report is received on time, but department staff finds some detail that needs to be fixed before the report can be accepted, a notification to be printed and physically mailed can be generated to the grantee detailing the particulars that need correction.
 - a. This letter gives the grantee 30 days to resolve the issue, after which the department may decide to request the return of the grant funds.
 - b. The system can generate a report on defined grantee issues.
10. If the final report is not received on time, the system can produce an electronic notification (e-mail) that is

sent to the grantee indicating the absence of this required report and indicating that the organization is currently in non compliance, and will not be able to apply for or receive grant proceeds until the situation has been resolved.

a. This condition will result in the organization being indicated as “in stop funds” with the reason being the missing final report.

b. If, at some point, these issues are resolved, department staff may remove the organization from the non compliance status and identify the reasons for the removal (usually the acceptance of the report) within the system.

11. Department staff can have several predefined queries in the system that indicate which grantees have a final report submission that is past due. Electronic notification can be sent to these grantees and will be logged in the system.

12. The proposed system will also provide the department the ability to revise the status of any application and allow acceptance of new or revised application information based on this status.

13. The department will be able to access each application in the system (at any time prior to or after the submission) directly from an administrative page for review or to provide assistance.

xii) Tracking Data for Reports

The proposed system will maintain basic fund receivable information necessary for the department to be able to re-grant funds. The proposed system will:

1. Generate simple reports based on the quantities and defined demographic information and amounts of county dollars spent;

2. Provide specific detail on where the source fund dollars are spent.

3. Additionally the system will contain the fields necessary to track this data, and will provide basic, defined queries to extract the information in a specified format that can be compiled into source of funds reports.

xiii) Generic Query Tools

From time to time, the department receives calls requesting funding history information, or other demographic breakdown information regarding the way that grant funds have been distributed in recent years. The proposed system will provide the department with the functionality to construct data exports/queries “on demand” using predefined fields and then export the resulting data to a third-party software application such as Microsoft Excel or Microsoft Access.

xiv) Social Security Number and FEIN Restrictions

Organizations that may receive grants from the Department must be registered with the Florida Division of Corporations. As such, they have a federal employer identification number (FEIN) that is public record. For organizations only, the proposed System will store FEIN numbers. Access to these will not be restricted. This information will be provided by the Grantee and verified at the Corporation’s web site for accuracy. At the county’s sole discretion, all requested and/or stored Social Security Numbers (SSNs) will be transmitted and stored in encrypted form. Typically, SSNs are stored in the system as only the final four numerals, rather than the full number.

xv) Data Extraction

1. The proposed System will provide data extraction capabilities to all segments of the database. This process will consist of exporting comma-delimited data.

2. Data will be provided in a comma-delimited structure for import into SQL, Microsoft Excel, Microsoft Access, or other data management application as needed.

3. The extraction process will provide a comma-delimited file that can be used to help facilitate an internal non-system function to generate form letters, mailing labels, and other mail merge functions outside of the web application.

xvi) Data Importation

Currently, all grant history records and organization information is stored in Lotus Approach databases.

1. The proposed system will allow the import of existing grant history data that meets certain defined criteria into the system database.
2. The selected proposer will assist the department in determining the appropriate standards and tools that could be used to import existing grant history data into the system's database.

(d) Provide description of proposed System's Technical System Specifications, including the following:**i) General System Overview**

The CultureGrants OnlineSM system is a three tiered web-based application hosted in a clustered configuration of physically separate web servers, database servers, and load balancers. This architecture allows the system to be developed once and deployed anywhere. The web browser acts as the deployment mechanism in this configuration and provides all required access to the system. By using industry standard browsers, no special software must be deployed at the client site as these browsers are freely available. These compose the first tier. The web servers comprise the second tier and host all developed application logic. The database servers comprise the third tier and house all data stored by the web application. By using a three-tiered architecture the web application is separated into modules that can be independently updated and tested as technology changes. This architecture is primarily based on business rules and not on any particular technology. Dependencies are minimized between tiers using proper design principles.

ii) Hardware/software/platform (disclose physical locations)

Example WESTAF Cluster

_ Node 1:

- Dual 3.2 Mhz Xeon processors
- 2GB RAM
- 4 x 250GB SATA RAID 5 drives with 700+ GB's usable disk space
- Software: MySQL, Apache, Sendmail

_ Node 2:

- Dual 3.2 Mhz Xeon processors
- 2GB RAM
- 4 x 250GB SATA RAID 5 drives with 700+ GB's usable disk space
- Software: MySQL, Apache, Sendmail

_ Management Machine/Staging Server:

- 700 Mhz PIII Processor
- 512 MB RAM
- 2 x 40 GB RAID I Drives

This machine only starts and manages the MySQL nodes and can go up and down without affecting the Cluster.

Currently, WESTAF servers are located at Brownrice Internet, 201 Camino de la Merced Taos, NM 87571. We anticipate moving the server maintenance to a RackSpace environment in the coming months. This transition will improve upon the already solid security of our systems.

iii) Programming requirements for deployment, customization, etc.

All programming requirements for deployment, customization, etc. will be handled by development team. Being a web-based application, CultureGrants OnlineSM, requires no client site configuration.

iv) Data exchange capabilities

The System will provide the ability to export data as comma-delimited data. The System will also provide the ability to allow the import of data from the existing system using agreed upon formats.

v) System architecture

The CultureGrants OnlineSM system is a web-based application that utilizes a series of web servers, database servers and load balancers arranged in a cluster configuration to meet availability and accessibility requirements.

vi) System real-time redundancy and fail-over functions

Each physical server is configured as a "Redundant Array of Inexpensive Disks" (RAID). Each server shares redundant copies of the same data on separate physical hard drives to minimize data loss and maximize availability.

The cluster configuration allows for continued system operation while disabled drives or servers are being repaired. This minimizes downtime as drives can be swapped while the server is live. Additionally, an entire server can be rendered inoperable without making the system unavailable.

WESTAF clusters utilize a dual 26 MB, redundant connection to the Internet using BGP (Border Gateway Protocol). Each of these scales to 100 MB. BGP creates this real-time connection redundancy by automatically detecting an outage on either of our connections and re-routing all traffic through the remaining good connection. Additionally, BGP speeds up traffic by determining which of our two connections is the fastest route to its destination and sends the data using the appropriate route.

vii) Hardware architecture and security

The servers are currently located on an Internet-connected network facility in New Mexico. The co-location facility safeguards data on the server from external intruders, whether they are physical or electronic (i.e., viruses, hackers, etc). It also provides a climate-controlled room that protects the physical server from environmental harm. The servers are monitored by 24 hours a day, 7 days a week, 365 days a year. Incidents are automatically communicated to WESTAF's network administrator via email, text page and cell phone. Downtime is automatically communicated to WESTAF's Senior Director of Technology by email and cell phone text message. Physical access is restricted to key subcontractors and all server access is limited to users with accounts.

viii) System backup and disaster recovery functions and plans

All data on the servers is copied onto three external (off site) servers every six hours. This protects data in the event of fire, natural disaster or electronic attack. If the main server were to experience a catastrophic failure, it is possible to reload it with backup data or load a new server with the backed up data and resume operations. These backup servers reside in an office separate from the co-location server room and also in WESTAF's Denver office.

Onsite--1 Terabyte RAID 5, dual Xeon Linux backup server.
Offsite --1 Terabyte RAID 5 Buffalo TeraStation backup.
Offsite in Denver Office--1 Terabyte RAID 5 Xeon Linux backup server

The main server is secured at a facility that has a backup generator. This backup generator will provide power to the server in case of black- or brown-outs.

ix) Data retention and archiving procedures and time periods

All data is retained on the external servers for a period to be defined. All data will be archived onto durable media and sent to the County on a period cycle to be defined.

Web-based Artwork Presentation Services

The Department is also interested in considering a web-based system or service that would provide the capability for organizations and administrators to easily and cost-effectively manage artist-application and jury processes related to calls for entry. The service would be specifically designed for use with public art projects, artist fellowships, and juried visual-arts competitions.

With such a service, artists would be able to upload digital images of their artwork for jury presentation and enter multiple calls for submission on-line simultaneously. The on-line application process would provide a means for artists to be able to directly upload high-resolution digital images of their artwork for jury presentation. All the uploaded artwork would then be password-protected in a consistent, high-quality, digital format. These high-resolution images would then be presented to a jury of each call for entry using high-resolution LCD projectors, thus replacing the currently used, less desired, slide projector review process. The service would also enable juries to score artwork in an on-line system.

WESTAF has developed a web-based service for the administration of visual art calls for entry, called CaFÉ™ (www.callforentry.org). Licensees of CaFÉ™ can opt to use an online or high definition jury process.

CaFÉ™ is an affordable and easy-to-use online management system for visual arts selection processes. CaFÉ™ efficiently collects artist profile data, artist statements, resumes, proposal information, and up to 100 images per artist. The system extends the abilities of project administrators by providing an online jury system, a searchable database, and a sophisticated electronic communication system.

The CaFÉ™ system has been roundly praised by artists. It saves them time and provides them with the capacity to constantly update their information. As more and more organizations make calls for entries using CaFÉ™, artists save even more time because they can use already-loaded existing images and profile information to complete applications for new calls.

Online or In-Person Adjudication: The CaFÉ™ jury system allows for the adjudication of applications at an in-person meeting or from remote locations. Administrators can provide jurors with early access to the juror scorecard, and ask them to make their initial screening decisions online. The screening can then be followed by an in-person group adjudication. The CaFÉ™ system offers several types of numerical adjudication systems and includes a system for aggregating and reporting that can aggregate and report jury results.

APPENDIX B
PRICE SCHEDULE

APPENDIX B – Price Schedule

TO

ON-LINE ARTS GRANTS APPLICATION AND MANAGEMENT SYSTEM

Deliverables and Payment Timetable

Date	Phase I Deliverable	Phase II Deliverable	Payment
April, 2008	Conclusion of Contractor's first in-person consultation session with County for overall planning of the Work as required by paragraph a), i. of Article 42 hereof		
July 30, 2008	Planning Period completed		
August 5, 2008	Contractor's completion and delivery of Functionality Outline as required by paragraph a), ii of Article 42 hereof		\$10,000
November 29, 2008	Specifications for Phase I completed and delivered to County as required by paragraph b), I of Article 42 hereof		
December 12, 2008	County approves Specifications for Phase I as required by paragraph d) iii of Article 42 hereof		\$30,000
December 13, 2008	Phase I development begins		
February 30, 2009	Contractor delivers completed Alpha Version of Phase I as required by paragraph b)ii of Article 42 hereof		\$40,000
March 1-20, 2009	County testing of Alpha Version of Phase I as required by paragraph d) iii of Article 42 hereof		
March 20, 2009	Alpha Version testing of Phase I completed	Specifications for Phase II completed and delivered to County as required by paragraph b), I of Article 42 hereof	\$20,000
March 31, 2009	First year's Maintenance and Technical Support Fee due		\$15,000
April 1, 2009	Contractor delivers completed Beta Version of Phase I as required by paragraph b) iii of Article 42 hereof	County approves Specification for Phase II as required by paragraph d) iii of Article 42 hereof	\$30,000
April 1-20, 2009	County testing of Beta Version of Phase I as required by paragraph d) iii of Article 42 hereof	Phase II development begins	
April 20, 2009	Beta Version testing of Phase I completed		
April 30, 2009	Training on Phase I completed as required by paragraph b) v of Article 42 hereof		\$2,500

Optional Additional Services			Price
On-site training (Per 10 Users, Per Day)			\$1,500.00
Senior Software Programmer (Per Hour)			\$150.00
Senior Web-page Programmer (Per Hour)			\$100.00
Software Escrow Account (Per Year)			\$2,000.00
Web-based Artwork Presentation Services			\$20,000.00
May 1, 2009	Delivery of Launch Ready Version and Launch of Phase I as required by paragraphs b) iv and iv and paragraph d) iii of Article 42 hereof		\$20,000
September 1, 2009		Contractor delivers completed Alpha Version of Phase I as required by paragraph b) ii of Article 42 hereof	
September 1-October 15, 2009		County testing of alpha site for Phase II as required by paragraph d) iii Article 42 hereof	
October 15, 2009		Alpha site testing of Phase II completed	
November 1, 2009		Contractor delivers completed Beta Version of Phase II as required by paragraph b) iii of Article 42 hereof	\$20,000
November-December 2009		County testing of Beta Version of Phase II as required by paragraph d) iii of Article 42 hereof	
December 15, 2009		Beta Version testing of Phase I completed	
December 31, 2009		Training on Phase II completed as required by paragraph b) v of Article 42 hereof	\$2,500
January 1, 2010		Delivery of Launch Ready Version and Launch of Phase II as required by paragraphs b) iv and iv and paragraph d) iii of Article 42 hereof	\$30,000
June 15, 2009	Second year's Maintenance and Technical Services Fee due		\$15,000
June 15, 2010	Third year's Maintenance and Technical Services Fee due		\$15,000
	Initial three (3) year term total		\$250,000.00
OTR: June 15, 2011	Year 4 Maintenance and Technical Support Fee		\$20,000
OTR: June 15, 2012	Year 5 Maintenance and Technical Support Fee		\$20,000